IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 951 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DHANUBEN WD/O HIRABHAI DAYALBHAI & 4 - Petitioner(s)
Versus
CHAIRMAN OF DISTRICT VALUATIONCOMMITTEE AND DIST. COLLECTOR & 1 - Respondent(s)

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Appearance :
MR KK TRIVEDI for the Petitioners.
Mr. Siraj Gori, Assistant GOVERNMENT PLEADER for the Respondents.

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 09/03/2006

ORAL JUDGMENT

Rule. Learned Assistant Government Pleader Mr. Siraj Gori waives service of notice of Rule on behalf of the respondents.

2. The present petition has been preferred against the order dated 18th October, 2005 passed by the District Level Land Valuation Committee and Collector, Surat (Annexure “A” to the memo of the petition). The learned advocate for the petitioners mainly submitted that the impugned order passed by the Collector in exercise of the powers under The Bombay Land Revenue Code, 1879 fixing the premium to be paid to Government for non-agricultural use of the land. The amount of premium fixed by respondent no.1, Surat is arbitrary, baseless and hence violative of Article 14 of the Constitution of India. It is also submitted by the learned counsel for the petitioners that no opportunity of being heard was afforded by the Collector, Surat before passing the impugned order against the petitioners. The valuation arrived at by the impugned order of the land in question is patently erroneous; the impugned order is a non-speaking order; no basis, no calculation has been reflected in the impugned order. It is also submitted by the learned counsel for the petitioners that an application was preferred by the petitioners on 13th July, 2004 and the impugned order fixing the premium was passed on

6th/18th October,2005. Thus, the market value arrived at for fixing the premium is not true and correct. It should be as of the date of the application preferred by the petitioner and therefore, the impugned order deserves to be quashed and set aside. The learned counsel for the petitioner has also relied on the judgment delivered by this court in the case of **Ashutosh Sarkari Karmachari Co.Op. Housing Society Ltd. vs. State of Gujarat and another reported in 1975 GLR, 525.**

3. I have also heard the learned Assistant Government Pleader who has submitted that the order passed by the Collector, Surat is absolutely in consonance with facts and law and the provisions of the Act of 1948. The price fixed by the Collector, Surat as a premium under Bombay Land Revenue Code, 1879, for non-agricultural use of the land, has been fixed keeping in mind the overall development of the surrounding land, valuation of the surrounding lands and the potential use of the land in question. It is also submitted by the learned Assistant Government Pleader that the authority has already considered the price of the surrounding land which is the main basis for fixing the premium which has already been

considered and therefore, the valuation arrived at by the impugned order may not be quashed and set aside.

4. Having heard the learned counsel for both the sides and looking to the facts and circumstances of the case, in my opinion, the order dated 6th/18th October,2005 passed by the District Level Land Valuation Committee and Collector, Surat (Annexure “A” to the memo of the petition) deserves to be quashed and set aside on the following facts and reasons.

(i) That the impugned order is a non-speaking order. The figure arrived at in the impugned order for the payment to be made by the petitioner, cannot come in the mind of respondent authority from heaven or sky. There must be the basis, there must be some data, and there must be some calculation, upon which the valuation must have been arrived at. Nothing has been reflected in the impugned order. Thefore, it is a non-speaking order.

(ii) If the impugned order is looked closely, it is observed in the first paragraph that the Town Planning Officer

has not given any opinion as to the basis of the price fixed by him, neither any table for fixing the price has been provided by the Town Planner to the District Level Land Valuation Committee and Collector, Surat. It is also recorded in the impugned order that in absence of this type of feed back as to the basis of fixation of the valuation, whatever papers are available, and after collecting necessary details, the price has been fixed. This observation is, sufficient enough, for quashing the impugned order. The basis of the calculation or summary thereof ought to have been provided to the petitioner by passing a speaking order. Which documents were perused and which informations collected and what is appreciated is neither expressed in the impugned order nor they have been supplied to the petitioner. The documents perused and the information (gathered), which are relied upon, while passing the impugned order, ought to have been supplied to the petitioner, failing which, the order

deserves to be quashed and set aside. Grant of reasons, for passing the impugned order, reflects application of mind. If the order is passed without assigning any reason, it is arbitrary. Arbitrariness and equality are sworn enemies of each other. Where arbitrariness is present, equality is absent.

(iii) Before passing the impugned order, the petitioner has not been heard. An opportunity of being heard ought to have been afforded to the petitioner by the District Level Land Valuation Committee and Collector, Surat. As the calculation of the amount of premium comes at approximately Rs. 2,15,00,678/- (correct figure should be 2,15,01,480/-) which is 70% of the total market value of Rs.3,07,16,400/- arrived at by the respondent no.1 considering the price per sq. metres. of the land at Rs.4400/- for 6981 sq.metres. of the land. Under Bombay Land Revenue Code, 1879, before such a huge liability is saddled upon the

petitioners, they ought to have been heard by the Committee and Collector, Surat. This Court while deciding the case in the case of **Harijan Vithalbhai Madhavbhai vs. Krishnamurthy, The Collector, Baroda and another reported in 1976 GLR, 525,** has observed in para-7 as under:

" 7. In order .....

.....In the case of a public land which the Government sells to a person the price which is fixed must in my opinion be a just and fair price. In order that the just and fair price of the land which the Government sells to a person is fixed, it is necessary that the grantee should have an opportunity to express his views and to submit to the Collector what fair and just price the land in question would bear. After taking into consideration what the grantee submits to the Collector, it is open to the Collector to take into account all other relevant factors and to fix the price of the land in question. In the instant case, the price of the land in question was fixed without the knowledge of the petitioner. He did not have any opportunity to express his views before the Collector and to tell him what in his opinion, would be the just and fair price. Since the petitioner in the instant case did not have such an opportunity it is difficult to say that the price of Rs. 4500/- fixed by the Collector for the land in question is a just and fair price. It is, therefore, necessary to direct the Collector to fix it again after ascertaining the views of the petitioner and after permitting him to submit to him whatever he wants to submit on that

aspect of the question."

(Emphasis supplied)

Thus, in the facts of the present case also, the impugned order is passed without giving any opportunity of being heard. Therefore, the impugned order deserves to be quashed and set aside. Before fixing price of the land, the petitioners ought to have been heard. Valuation of land is a complex phenomina. Unilateral fixation of price of land, by the officers of the State leads to unfettered discretion, absolute power and arbitrariness. Therefore, to avoid arbitrariness and leaning towards use of "absolute power" (every power tends to corruption, absolute power, corrupts absolutely), opportunity of being heard ought to be given to the petitioner so as to enable him to express, what is the correct market value of his land.

(iv) The impugned order has been passed in the year 2005, whereas the application was preferred by the petitioners in the month of July, 2004. The valuation ought to have been arrived at on the date of the application and

then to add interest thereupon. This aspect of the matter has also not been considered by the Collector, Surat while passing the impugned order, as held by this Court in the case of **Ashutosh Sarkari Karmachari Co.Op.Housing Society Ltd. vs. State of Gujarat and another reported in 1995(2) GLR, 1419,** paragraphs-4,5,6 and 7 whereof read as under:

> *"4. It cannot be gainsaid that applications for allotment of land from the disputed land were made by the petitioner, Sinchainagar and Padmakunverba around the same time. In fact, the petitioner's application for allotment of land was prior in the point of time. The opinion of the concerned Deputy Town Planner was obtained regarding the valuation of the disputed land. By the communication at Annexure "E" to this petition, its authority put the valuation thereof at Rs.450/- per sqr. Mtr. It is not in dispute that the price of the land demanded by Sinchainagar and Padmakunverba at that rate was below Rs. 25 lakhs and their applications were processed by the Committee of Secretaries in view of the Government Resolution at Annexure A to this petition. The price of the land demanded by the petitioner at the rate of Rs.450/- per square metre would obviously be more than Rs. 25 lakhs. Its application was, therefore, required to be processed by the Committee of Ministers in accordance with the Government Resolution at Annexure "A" to this petition. It appears that there was inordinate delay in processing the petitioner's application for allotment of land from the disputed land. That has resulted in fixation of the price thereof at Rs.800/- per sq.mtr. That price has been fixed after obtaining the*

opinion of the Deputy Town Planner at Rajkot with respect to its valuation. That report is not on record. Its reference has, however, been made in the affidavit-in-reply filed by and on behalf of the respondent no.1. Shri Dave for the respondents has informed the Court that the record of the case was in the custody of the concerned officer instructing him in the matter. Shri Dave has fairly shown to me the report of the Deputy Town Planner at Rajkot putting valuation of the disputed land at Rs.800/- per sq.mtr. At the relevant time. So far as that part of the fact situation is concerned, there cannot be much quarrel. The fact, however, remains that the delay in consideration of the petitioner's application has resulted in putting a much higher price of the disputed land for the purpose of its allotment. The question is whether or not such delay has resulted in meting out unequal treatment to the petitioner vis-a-vis Sinchainagar and Padmakunverba.

5. It is true that, under the guidelines contained in the Government Resolution at Annexure "A" to this petition, the surplus land is to be allotted to the applicants on the prevalent market rate and the crucial question is the market value of the land in question at the time of application or at the time of allotment. Ordinarily, the fixation of market price should be treated as on the date of allotment. However, in the present case, the date of allotment will not have to be taken into consideration for the simple reason that there was inordinate delay in consideration of the petitioner's application.

6. It may be noted that the land to Sinchainagar was allotted at the rate of Rs.450/- per square metre by the order passed on 4th December 1991 at Annexure "F" to this petition. Nearly one year thereafter, some land from the disputed land was allotted to Padmakunverba at the ate of Rs. 475/- per square metre by the order passed on 16th November 1992 at Annexure "G" to this petition. The price-rise during the intervening period of one

year was found to be Rs. 25/- per square metre only. The parcel of land allotted to the petitioner appears to have been made on or around 30th September 1993 at Rs.800/- per square metre by one communication at Annexure "L" to this petition, that is, nearly 10 months after the order at Annexure "G" to this petition. The price rise during the intervening period is as much as Rs. 325/- per square metre. Ordinarily, it should pass comprehension. It might smack of mala fides also. I do not propose to enter into that aspect of the case at this stage.

7. It cannot be gainsaid that applications for allotment of surplus land available for disposal under section 23 of the Act have to be disposed of as expeditiously as possible in order to avoid creation of any inequality with respect to the price at which such land may be allotted. If no surplus land is available for disposal, application for allotment may be kept pending. However, when land is available for disposal, applications should be disposed of as expeditiously as possible. Any delay in disposal of such applications might result into fixation of different prices at the time of allotment. It transpires from the record that the application of Sinchainnagar was disposed of within seven months and that of Padmakunverba within 14 months. Simply because their applications were to be considered by a different Committee from the Committee which was to consider the petitioner's application would not justify the inordinate delay in disposal of such applications. Inordinate delay in disposal of the petitioner's application for allotment of land has resulted in unreasonable fixation of its price vis-a-vis the price at which the land has come to be allotted to Sinchainagar and Padmakunverba. In that view of the matter, the fixation of price of the land proposed to be allotted to the petitioner can be said to be exorbitant or unreasonably high. It could not have been fixed at more than Rs.500/- per square metre." (emphasis supplied)

The observations made in paras-4,5,6 and 7 of the aforesaid judgment ought to have been considered before passing the impugned order. Similar, are the observations in the **judgment dated 29th June, 1999 in Special Civil Application no. 2459 of 1999 delivered by this Court (Coram: Y.B.Bhatt,J) in the case of HP Joshi, Secretary of Proposed Banshari Sarkari Karmachari Mandli Ltd. vs. State of Gujarat, especially in para-6 as under:**

> *"6. I do not consider it necessary to reiterate the principles laid down therein, which are contained in paragraphs 5 to 9 of the said decision. The basic principle is that when an allotment (or offer to make an allotment) is made in favour of an applicant, which is governed by the guidelines issued and adopted by the State Government for such allotment under section 23 of the said Act, the price at which the land is offered must be the prevailing market value on a date which is in reasonable proximity with the date of the application. In other words, merely because there is administrative delay in dealing with the petitioners' application, or even while dealing with the petitioners' application together with similar applications, such administrative delay cannot be permitted to work to the prejudice of the applicants."*
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> *(Emphasis supplied)*

Thus, the observations of the aforesaid judgments

ought to have been kept in mind by the Collector, Surat, while passing the impugned order.

5. As a cumulative effect of the aforesaid facts and reasons and judicial pronouncements, the impugned order dated 6th/18th October, 2005 passed by the District Level Land Valuation Committee, and Collector, Surat (Annexure “A” to the memo of the petition) is hereby quashed and set aside. The Collector, Surat is hereby directed to give an opportunity of hearing to the petitioners and thereafter to pass afresh order after taking into consideration the aforesaid observations and the judicial pronouncements,and after considering the contentions which may be raised by the petitioner at the time of hearing, early as possible and practicable and preferably within a period of three months from the date of receipt of writ of this Court. Rule made absolute accordingly with no order as to costs.

(D.N.Patel,J)

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